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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERTO VAIOLI, SAMUEL R. NAMALA, MASSIMO
BARALDI, FRANK G. KOVACH, TOMMASO PARISI, KELLY J.
WILBAR, and NEIL S. PENNINGTON

Appeal 2016-007539
Application 13/902,349
Technology Center 3700

Before LYNNE H. BROWNE, THOMAS F. SMEGAL, and
PAUL J. KORNICZKY, Administrative Patent Judges.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134 of the Examiner's rejections² of claims 1–20: (a) under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter in reciting instructions and guidelines pertaining to how one should act in the event of an

¹ Appellant is the Applicant, QUBICAAMF EUROPE S.P.A., which, according to the Appeal Brief, is the real party in interest. Appeal Br. 2.

² Appeal is taken from the adverse decision of the Examiner as set forth in the Final Office Action, mailed June 18, 2015 (“Final Act.”) and as modified in the Answer dated June 3, 2016 (“Ans.”). We note that in the Answer, the Examiner withdrew the rejection of claims 2, 3, 6, 7, 9, 10, and 16–18 under 35 U.S.C. § 112, fourth paragraph. Ans. 2.

occurrence; (b) under 35 U.S.C. § 112, second paragraph, as being indefinite for reciting both an apparatus and the method steps of using the apparatus; and (c) under 35 U.S.C. § 102(b) as anticipated by Bouchard (US 7,025,687 B2, iss. Apr. 11, 2006). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Claims 1, 13, and 15 are independent. Claim 1 is reproduced below and illustrates the claimed subject matter, with disputed limitation emphasized.

1. A system, comprising:

a management system comprising a computer having stored therein instructions to provide special effects associated with one or more events to one or more special effects components,

wherein a bowling mode feature of the management system allows a user to define and program, on a predefined schedule, a set of parameters related to *a status of each lane* in a bowling center, and

wherein, upon an occurrence of an event at a lane at the bowling center, the management system:

determines one or more special effects based on the occurrence of the event and the status of the lane defined by the bowling mode; and

provides the instructions to the one or more special effects components to effectuate the special effects associated with the one or more events.

ANALYSIS

*Rejection of Claims 1–20 as Directed to Non-Statutory Subject Matter*³

Appellant argues the claims subject to this rejection as a group. Appeal Br. 3–35; Reply Br. 2–22. We select claim 1 as representative, with the remaining claims standing or falling with claim 1. 37 C.F.R. § 41.37(c)(1) (iv) (2014).

The Supreme Court has set forth “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int'l.*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S Ct. 1289, 1294 (2012)). According to the Supreme Court’s framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* If so, we must secondly “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* The Supreme Court characterizes the second step of the analysis as “a search for an ‘inventive concept’ — i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.*

³ A correct copy of claim 19 is found only in the Amendment dated April 8, 2015.

Addressing the first step of the Alice analysis, the Examiner determines that claims 1, 13, and 15 are directed to the “abstract idea of using a computer to sense events and control lights, sounds and effects in a ‘system.’” Final Act. 2. In other words, the claims are directed to a method of managing a computer-implemented system for detecting events and controlling special effect components. In support of this determination the Examiner finds that the “[s]teps such as ‘detecting’, ‘associating’ and providing instructions’ are most broadly related to the gathering and manipulation of data associated with extra solution activity.” *Id.* at 3. The Examiner explains that to the extent that performing a special effect is a physical step, such performance is considered an extra solution activity more analogous to the display of data. *See id.*

Appellants contend that the Examiner errs in not addressing the dependent claims. *See* Appeal Br. 6 (citing Interim Guidance on Patent Subject Matter Eligibility, Federal Register notice dated December 16, 2014). We note that we are not bound by the guidance provided to Examiners by the Office. Further, the guidance at issue is no longer in effect. As discussed *supra*, we apply the two-part analysis set forth in Alice.

Next, Appellants contend “the limitations identified by the Examiner are not an abstract idea.” Appeal Br. 6. In support of this contention, Appellants argue that abstract ideas are limited to “fundamental economic practices; certain methods of organizing human activities; an idea of itself; and mathematical relationships/formulas.” *Id.* However, as discussed *supra*, the Examiner finds that the claims are directed a computer program. Final Act. 2. Further, the method steps set forth in the claims pertain to the

collection, manipulation, and dissemination of data. *See* Appeal Br. 66–69 (Claims App.).

Similar data manipulation steps have been held ineligible under § 101. *See Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding the concept of “1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory” abstract); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“Intellectual Ventures I”) (concluding that customizing information and presenting it to users based on particular characteristics is abstract as well).

Our reviewing court further instructs us “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). Thus, we are further instructed that we must determine if “the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the Alice analysis.” *Id.* Here, however, the limitations at issue are not directed to an improvement of a computer’s functionality. Rather, the claims are directed to the abstract idea of using a computer to manage a system for detecting events and controlling special effect components.

Having determined that claim 1 is directed to an abstract idea, we must determine whether the additional elements of the claim transforms it into patent-eligible subject matter. As discussed *supra*, the Examiner

determines that at most the data collection, manipulation, and dissemination steps pertain to post solution activity. *See* Final Act. 3.

In response, Appellants contend “the steps of claim 1 are not mere gathering and manipulation of data associated with extra solution activity,” but “provide one or more special effects based on the occurrence of the event and the status of the lane defined by the bowling mode,” which “is clearly more than post solution activity.” Appeal Br. 9.

However, we agree with the Examiner “the computer is not necessary to perform the steps of the abstract idea since the activation of any special effect such as lights or sounds upon the observation of a bowling event can clearly be done . . . manually by an operator.” Ans. 9.

Thus, we sustain the Examiner’s decision rejecting claims 1–20 as being directed to non-statutory subject matter.

Rejection of Claims 1–20 under 35 U.S.C. § 112, second paragraph, as being indefinite

The Examiner finds that “[w]hile the claims recite structure suggesting an apparatus, they recite some steps consistent with a process.” Final Act. 5. Based on this finding, the Examiner determines that “a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite.” *Id.* (citing *In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, (Fed. Cir. 2011)). However, as the Examiner explains, in that case confusion was caused because one of the limitations was directed to actions of users of the system not to actions of the system itself. *See id.* at 5–6. This confusion rendered the claim indefinite.

The Examiner does not adequately explain how similar confusion exists in this case. Rather, as Appellant explains “the claims recite a function of the computer (claim 1) or the management system (claim 13) and that there is no other way to recite the features of a computer or management system, but for the use of the processes.” Appeal Br. 37. The Examiner does not identify, nor do we discern, any limitations directed to actions performed by something other than the computer or management system. Thus, the Examiner’s reliance on *In re Katz* is misplaced. For this reason, we do not sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph.

Rejection of Claims 1–20 under 35 U.S.C. § 102(b) as anticipated by Bouchard

The Examiner finds that “Bouchard shows a bowling center management system 16 with a control system (abstract, ln. 5) that is capable of determining a special event such as 40 of fig. 9 and effecting an audio effect col. 10, ln. 39.” Final Act. 10. More specifically, the Examiner determines that “allowing a user to define and program on a predefined schedule a set of parameters . . . falls with the broadest suggestion of Bouchard to allow, ‘user customized entertainment system’ (col. 1, ln. 15).” *Id.* at 11. Furthermore, the Examiner reasons that “the term ‘status of the lane’ is so broad that the status of the ‘pinfall’ (col. 10, ln. 40) in Bouchard can be a status of the lane meeting the limitations of the claim.” *Id.*

In response, Appellants acknowledge “Bouchard discloses that each bowler may select his own entertainment style and corresponding audiovisual content to be associated with him individually and to be played

or implemented on his particular lane when he is bowling,” but argue that “Bouchard does not disclose that the system 10 includes a bowling mode feature that allows a user to define and program, on a predefined schedule, a set of parameters related to a status of each lane in a bowling center.”

Appeal Br. 44. Appellants continue by arguing, “Bouchard makes no mention of a status of a lane with respect to these features, or allow the user the ability to define and program, on a predefined schedule, a set of parameters related to a status of each lane in a bowling center.” *Id.* at 45.

Thus, Appellants contend that “although Bouchard teaches expanding some functionality of the scoring system, there simply is no disclosure that a user can customize the entertainment system in the manner as recited by the claimed invention with respect to defining a status of the lane.” *Id.* at 48; *see also* Reply Br. 23–30.

We determine the scope of the claims in a patent application by giving claims “their broadest reasonable interpretation consistent with the [S]pecification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). “Construing claims broadly during prosecution is not unfair to the applicant . . . because the applicant has the opportunity to amend the claims to obtain more precise claim coverage.” *Id.*

Appellant has not pointed to any lexicographic definition in the Specification of the phrase “status of each lane,” or identified any other disclosure therein that precludes the Examiner from construing “that the ‘pinfall’ (col. 10, ln. 40) in Bouchard can be a status of the lane meeting the limitations of the claim.” Final Act. 11. As the Examiner further reasons,

“[i]n Bouchard, all of the voice, sound, light, and music effects selected by a player ‘are prompted and played in part upon the occurrence of at least one of a designated number of bowling events (i.e., strike, spare, split, gutter ball, etc.).’” Ans. 29 (citing Bouchard, col. 6, ll. 35–38).

For the foregoing reasons, we discern no error in the Examiner’s findings and agree that Bouchard anticipates claims 1–20.

DECISION

We AFFIRM the Examiner’s rejections of claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter and under 35 U.S.C. § 102(b) as anticipated by Bouchard.

We REVERSE the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph as being indefinite.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED